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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES E. WESTBROOKS,
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13 vs. Petitioner,
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15 DIRECTOR OF CALIFORNIA
DEPARTMENT OF CORRECTIONS,
16 Respondent.

CASE NO. 09-CV-136 JLS (POR)

**ORDER: (1) ADOPTING REPORT
AND RECOMMENDATION, (2)
DENYING PETITION FOR WRIT
OF HABEAS CORPUS, AND (3)
DENYING CERTIFICATE OF
APPEALABILITY**

(Doc. No. 15)

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18 Presently before the Court is Petitioner's petition for a writ of habeas corpus pursuant to 28
19 U.S.C. § 2254 and Magistrate Judge Louisa S. Porter's Report and Recommendation ("R&R")
20 advising this Court to deny the petition. (Doc. Nos. 1 & 15.)

21 Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1) set forth the
22 duties of a district court in connection with a magistrate judge's report and recommendation. "The
23 district court must make a *de novo* determination of those portions of the report . . . to which objection
24 is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations
25 made by the magistrate." 28 U.S.C. 636(b)(1)(c); *see also United States v. Remsing*, 874 F.2d 614,
26 617 (9th Cir. 1989); *United States v. Raddatz*, 447 U.S. 667, 676 (1980). However, in the absence of
27 timely objection, the Court need "only satisfy itself that there is no clear error on the face of the
28 record." Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (citing *Campbell v. U.S. Dist. Court*,

1 501 F.2d 196, 206 (9th Cir. 1974)).


2 In this case, Petitioner has failed to timely file objections to Magistrate Judge Porter's R&R.
3 Having reviewed the R&R, the Court finds that it is thorough, well reasoned, and no contains no clear
4 error. Therefore, the Court **ADOPTS** the R&R in full and **DENIES** the petition.

5 Finally, this Court is under an obligation to determine whether a certificate of appealability
6 should issue in this matter. A certificate of appealability is authorized "if the applicant has made a
7 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner
8 satisfies this standard by demonstrating that jurists of reason could disagree with the district court's
9 resolution of his constitutional claims or that jurists could conclude the issues presented are adequate
10 to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see*
11 *also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court must either (1) grant the certificate of
12 appealability indicating which issues satisfy the required showing or (2) state why a certificate should
13 not issue. Fed. R. App. P. 22(b).

14 This petition raised two legal issues: whether the jury instructions were constitutionally
15 deficient and whether this constitutes structural error. Neither of these merit a certificate of
16 appealability. The Court finds that reasonable jurists would agree that the California Court of
17 Appeal's conclusions were neither contrary to nor an unreasonable application of clearly established
18 federal law. Accordingly, no certificate of appealability should issue.

19 IT IS SO ORDERED.

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21 DATED: April 20, 2010

22 
23 Honorable Janis L. Sammartino
24 United States District Judge
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